

# GLOBAL CLASS AND THE COMMERCIAL-SEXUAL EXPLOITATION OF CHILDREN: TOWARD A MULTIDIMENSIONAL UNDERSTANDING

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## INTRODUCTION

This Essay draws together several focal points of the Third Annual National People of Color Conference in 2010, human trafficking, racial contexts, criminal law, immigration law and international law, while addressing the core theme of post-racialism and other “posts.”

## I. PURPOSE

The purpose of this Essay is three-fold. First, it challenges the notion that we live in a post-race, post-class, or post-feminist environment in which race, class and gender disparities in contemporary law and society have diminished or are diminishing to a point at which discussing inequalities along these lines is unavailing. Second, using a Multidimensional approach that includes childhood and age as significant dimensions of inequality, this Essay develops a concept of class to enhance Critical Class Theory (“Class Crits”). Third, it challenges “the posts” through a social problem that epitomizes “multidimensional subordination”—child sex trafficking—with particular focus on the commercial

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sexual exploitation of children through prostitution in the United States.

## II. BACKGROUND

### A. The Posts<sup>1</sup>

An in-depth discussion regarding the posts addressed here is beyond the scope of this Essay. However, it is necessary to briefly specify which aspects are of concern to this discussion.

A post-class position includes arguments that since the post-industrial age of the 1970's, class dynamics have become too confusing, complex or unidentifiable to make sense of along the Marxian lines of socio-economic class. It is claimed that this is because "production and labour [are] no longer . . . the fundamental basis of social organization."<sup>2</sup> Furthermore, it claims that people no longer identify themselves along class lines, but primarily as consumers. For some, this means moving away from any serious undertaking of class analysis to focus instead upon "alternative modes of analysis concerned with inequalities and identities formed along lines of gender, race or ethnicity; and with social movements that [go] beyond class politics."<sup>3</sup> However, in the theoretical environment of the posts, this shift is quickly met with barriers raised by certain post-racial and post-feminist positions that foreclose these discussions.

### B. Multidimensionality and Complex Inequalities

Multidimensionality is an approach to researching, analyzing and understanding power—the dynamics of equality, inequality,

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<sup>1</sup> For a general discussion of "the posts," see Catherine Squires et al., *What Is This "Post-" in Postracial, Postfeminist . . . (Fill in the Blank)?*, 34 J. COMM. INQUIRY 210 (2010). For explanations and discussions of post-racialism, see Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589 (2009); Tyrone C. Howard & Terry Flenbaugh, *Research Concerns, Cautions and Considerations on Black Males in a Post-racial Society*, RACE, ETHNICITY & EDUC., Jan. 2011, at 105. For explanations and discussions of post-feminism, see Stéphanie Genz, *Third Way/ve: The Politics of Post-Feminism*, 7 FEMINIST THEORY 333 (2006); Elaine J. Hall & Marnie Salupo, *The Myth of Postfeminism*, 17 GENDER & SOC'Y 878 (2003).

<sup>2</sup> FRAN TONKISS, *CONTEMPORARY ECONOMIC SOCIOLOGY: GLOBALISATION, PRODUCTION, INEQUALITY* 144 (2006) (describing a post-class position).

<sup>3</sup> *Id.*

domination and subordination. It is a method of analyzing the complex inequalities that result from the interaction of hegemonic powers and subaltern subjects along multiple and various dimensions of identity, including, among others, race, class, gender, age, nationality, and disability.<sup>4</sup> “Identity is multidimensional.”<sup>5</sup> Systems of power organized along identities are often “interrelated and mutually reinforcing,”<sup>6</sup> such that the interactional dynamics of power cannot be fully understood in isolation from one another.<sup>7</sup>

### C. Class Crits

The Critical Class Theory movement (“Class Crits”) is a Multidimensional approach to the analysis of race and class that builds from Critical Race Theory.<sup>8</sup> Class Crits shares this theoretical foundation with Critical Race Feminism, lending itself to gender analysis.<sup>9</sup> Class Crits leaves open the concept of class for definition, with “new theories that better define the idea.”<sup>10</sup> “[A] systematic analysis of class, particularly as a product of economic ordering, as well as its relationship to race has not yet emerged, even though critical race scholars have argued for years that the class system in the U.S. mutually constructs race, gender, and other forms of oppression.”<sup>11</sup> Therefore, an aim of this Essay is to stimulate and

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<sup>4</sup> See, e.g., Osagie K. Obasogie, *Anything but a Hypocrite: Interactional Musings on Race, Colorblindness, and the Redemption of Strom Thurmond*, 18 YALE J.L. & FEMINISM 451 (2006) (discussing the approach of “interactionality,” connecting sociological principles of interactionism to the legally oriented multidimensionality and new complexity theories).

<sup>5</sup> Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329, 339 (2006).

<sup>6</sup> *Id.* at 340.

<sup>7</sup> For in-depth explanations of multidimensionality, see Darren L. Hutchinson, *Identity Crisis: ‘Intersectionality,’ ‘Multidimensionality,’ and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285 (2001); Darren L. Hutchinson, *New Complexity Theories: From Theoretical Innovation to Doctrinal Reform*, 71 UMKC L. REV. 431, (2002); Mutua, *supra* note 5.

<sup>8</sup> See generally Mutua, *supra* note 5 (an explanation of Critical Race Theory, Critical Race Feminism and Class Crits).

<sup>9</sup> *Id.* at 339 (“Critical Race Feminism builds on Critical Race Theory as well as insights specifically from black feminist theory . . . [focusing] on the intersections of race, ethnicity and/or colonialism on the one hand and gender on the other. In addition, it explores the international manifestations of racialized gender oppression.”).

<sup>10</sup> *Id.* at 368 n.250.

<sup>11</sup> *Id.* at 379.

develop perspectives on class. The analysis of class in combination with other social categories often reveals greater inequalities. Class Crits postulates that class analysis of how material resources are accumulated and distributed can reveal how these processes are gendered and racialized.<sup>12</sup>

Childhood and age are rarely centered in, and are often excluded from, different critical analyses.<sup>13</sup> However, focusing on childhood and age provides greater insight into inequalities. For example, one in seven of all people in the United States lived below the poverty line in 2009.<sup>14</sup> This reveals information about class, specifically the relatively high proportion of poverty that exists in the wealthiest developed Western nation. An examination of child poverty reveals that of all children in the United States, one in five (approximately twenty percent) lived below the poverty line in 2009,<sup>15</sup> as compared to less than one in seven adults (approximately thirteen percent).<sup>16</sup> “Children represent twenty-five percent of the population, yet they comprise thirty-six percent of all people in poverty.”<sup>17</sup> Thus, children bear the greater brunt of poverty in the United States. African-American children bear the greatest burden of child poverty and poverty in general.<sup>18</sup> One in three African-American children lived in poverty in 2009.<sup>19</sup>

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<sup>12</sup> See *id.* at 389-91.

<sup>13</sup> For examples that draw from critical race theory and critical race feminism while also centering a child perspective, see Maria Grahn-Farley, *A Theory of Child Rights*, 57 U. MIAMI L. REV. 867 (2003).

<sup>14</sup> CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, P60-238, INCOME, POVERTY AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2009, at 14 (2010), <http://www.census.gov/prod/2010pubs/p60-238.pdf>.

<sup>15</sup> *Id.* at 17.

<sup>16</sup> *State & County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/00000.html> (last visited July 15, 2012).

<sup>17</sup> MICHELLE CHAU ET AL., NATIONAL CENTER FOR CHILDREN IN POVERTY, BASIC FACTS ABOUT LOW-INCOME CHILDREN 1 (2010), [http://www.nccp.org/publications/pdf/download\\_364.pdf](http://www.nccp.org/publications/pdf/download_364.pdf).

<sup>18</sup> MARYBETH J. MATTINGLY & JESSICA A. BEAN, THE CARSEY INST., THE UNEQUAL DISTRIBUTION OF CHILD POVERTY: HIGHEST RATES AMONG YOUNG BLACKS AND CHILDREN OF SINGLE MOTHERS IN RURAL AMERICA 1 (2010), <http://www.carseyinstitute.unh.edu/publications/IB-Mattingly-BlackChildPoverty.pdf>. See also RACE DATA, TABLE 13: POVERTY STATUS OF THE POPULATION BY SEX AND AGE, FOR BLACK ALONE AND WHITE ALONE, NOT HISPANIC: 2008, U.S. CENSUS BUREAU, [www.census.gov/population/www/socdemo/race/ppl-ba09.html](http://www.census.gov/population/www/socdemo/race/ppl-ba09.html) (last visited Apr. 7, 2011) [hereinafter U.S. CENSUS BUREAU, CHILD POVERTY]. Data from this table demonstrates that

### III. ARGUMENTS

#### A. Class is Still Relevant: Understanding Class Globally and Nationally

##### 1. *Post-Industrial*

Post-class arguments that claim the diminishing relevance of class often cite the “post-industrial” shift as supporting evidence. “Post-industrial” does not mean that manufacturing work has entirely disappeared; rather it signifies a shift in the geography of industrial labor and the social makeup of those who perform it. Manufacturing work is no longer concentrated in the “First World.” Thus, men of North American and Western European backgrounds no longer perform the bulk of industrial labor in the world due to a shift in developed national economies from manufacturing to service work.<sup>20</sup>

However, it is important to recognize that in the globalizing capitalist economy, it is usually a woman or child of color who performs this work, and that they do so for far less pay.<sup>21</sup> An approach that explains this shift in the era of globalization is the “New International Division of Labor” (NIDL). NIDL is founded on a world-systems theory and captures a shift in the world economy from older colonial patterns to more recent developments.<sup>22</sup> Specifically, firms in advanced industrial

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the poverty rate for African-American children (one in three) is greater than that of their adult African-American counterparts (one in five).

<sup>19</sup> U.S. CENSUS BUREAU, CHILD POVERTY, *supra* note 18.

<sup>20</sup> TONKISS, *supra* note 2, at 7.

<sup>21</sup> *Id.* at 7, 23-24

<sup>22</sup> Tonkiss explains that world systems theory is associated with sociologist Immanuel Wallerstein, who explicates the historical development of a world economy. World systems theory holds that a capitalist mode of production is integrated in the world economy through an international division of labor that divides the world into “three broad economic zones”: the core, the periphery, and semi-periphery. *Id.* at 12. The core comprises “the dominant region in the capitalist world economy,” which has always included northern and western Europe and has more recently come to include North America and Japan. *Id.* The periphery has provided “raw material and commodities exports to the core,” as well as slave labor in early capitalism and cheap labor in advanced capitalism. This implies “a model of structured inequality” and dependency in the world economy. *Id.* at 12-13. Although geographic locations of these may vary throughout history, world-systems theory provides a viable “template for changing economic relations between the global North and the global South.” *Id.* at 13. Thus, NIDL accounts for a

economies (the core) employ and control cheap labor in developing economies (the periphery) to do manufacturing work.<sup>23</sup> However, NIDL today also includes itinerant service labor, and rests on social hierarchies, often interlocking with local sexual divisions of labor.<sup>24</sup>

Levels of exploitation and the quality of working conditions in the global economy are highly dependent upon the “characteristics of the workforce.”<sup>25</sup> In both manufacturing and itinerant service sectors, “the exploitation of women’s and children’s [labor] has been crucial to the emergence of the NIDL.”<sup>26</sup> Gender, age and occupational status are the strongest indicators of exploitation and working conditions.<sup>27</sup> Being young, female and occupying unskilled or low-skilled positions in global commodity chains is more indicative of economic exploitation and working conditions than cartographic location or for whom one works.<sup>28</sup> These findings on the global economy and social classifications help locate the commercial sexual exploitation of children within these structures.

## 2. *Global Classes*

The global economy and labor have undergone corresponding shifts in the era of post-industrial globalization. However, the mode of production is still labor. These changes include the formation of a globalizing elite or “Transnational Capitalist Class” (TCC), the fragmentation of labor, and increasing polarization and incidence of poverty within and among nations due to the uneven distribution of the benefits of growth.<sup>29</sup>

The TCC is a networked class of global capitalists that is structurally unified in relation to production—as a “class in itself”—

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major shift in the international division of labor during the globalization era. *Id.* at 10-14.

<sup>23</sup> TONKISS, *supra* note 2, at 7-8.

<sup>24</sup> *Id.* at 7, 23-24; *see generally* MARIA MIES, PATRIARCHY & ACCUMULATION ON A WORLD SCALE: WOMEN IN THE INTERNATIONAL DIVISION OF LABOUR (1998) (examining the role of women in the new international division of labor).

<sup>25</sup> LESLIE SKLAIR, GLOBALIZATION: CAPITALISM AND ITS ALTERNATIVES 131 (2002) [hereinafter SKLAIR, GLOBALIZATION].

<sup>26</sup> TONKISS, *supra* note 2, at 24 (citing ILO 2005 and discussing the global prevalence of child labor and child prostitution.).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *See* SKLAIR, GLOBALIZATION, *supra* note 25, at 6, 9, 48; *see generally* MANUEL CASTELLS, THE RISE OF THE NETWORK SOCIETY (2d ed. 2000) (developing a systemic analysis of global informational capitalism).

and is unified in terms of its class consciousness and self-representation—as “a class for itself.”<sup>30</sup> Transnational corporations drive the global economy, fueled by “the culture-ideology of consumerism.”<sup>31</sup> The TCC organizes the politics of these corporations.<sup>32</sup> The TCC consists of four fractions that each play “a specific part in building and sustaining [its hegemony]”<sup>33</sup>: (1) the corporate fraction—executives who own and/or control the major transnational corporations and their local affiliates, (2) the state fraction—inter-state bureaucrats and globalizing politicians; (3) the technical fraction—globalizing professionals; and (4) the consumerist fraction—globalizing merchants and media.<sup>34</sup>

For a class to be “transnational” its members must be able to influentially participate in international institutions in three spheres of the global system: economic, political and/or cultural-ideological.<sup>35</sup> As the TCC forms and protects its hegemony, transnational corporations and global commodity chains fragment and stratify laboring classes into at least four broad but distinct categories: specialty labor, formal waged and informal labor in the NIDL, and forced labor.<sup>36</sup> In descending order, these class categories represent tiers that generally indicate levels of skill

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<sup>30</sup> For Sklair, membership in the TCC does not require direct ownership and/or control of the means of production. Owners and executives in the TCC make up only one part of the class. Leslie Sklair, *Sociology of the Global System*, in THE GLOBALIZATION READER: AN INTRODUCTION TO THE GLOBALIZATION DEBATE 70, 72 (Frank J. Lechner & John Boli eds., 2d ed. 2004) [hereinafter Sklair, *Global System*]. Despite any alleged fractionation, there is no internecine conflict within the TCC’s ranks. It may struggle over tactics, but it consistently agrees on goals: global economic liberalization and the freedom of transnational capital, as well as their alliance against labor interests (state regulation and redistribution of wealth). See William I. Robinson & Jerry Harris, *Towards a Global Ruling Class? Globalization and the Transnational Capitalist Class*, 64 SCI. & SOC’Y Spring 11, 21 (2000); William K. Carroll & Colin Carson, *Forging a New Hegemony? The Role of Transnational Policy Groups in the Network and Discourses of Global Corporate Governance*, 9 J. WORLD SYSTEMS RES. 67 (2003); TONKISS, *supra* note 2, at 152, 155.

<sup>31</sup> SKLAIR, GLOBALIZATION, *supra* note 25, at 46-47.

<sup>32</sup> *Id.*

<sup>33</sup> LESLIE SKLAIR, THE TRANSNATIONAL CAPITALIST CLASS 7 (2001) [hereinafter SKLAIR, TRANSNATIONAL].

<sup>34</sup> Leslie Sklair, *Global System*, *supra* note 30, at 70, 73; see also Jeb Sprague, *Transnational Capitalist Class in the Global Financial Crisis: A Discussion with Leslie Sklair*, 6 GLOBALIZATIONS 499, 500 (2009).

<sup>35</sup> Sklair, *Global System*, *supra* note 30.

<sup>36</sup> See also TONKISS, *supra* note 2, at 129-33.

required for the labor, valuation of the work, the amount of pay and benefits, the quality of working conditions, the level of bargaining power, and the scope of one's "transnationality."

Specialty labor (the TCC's technical fraction) becomes the sole "transnational" class of labor, which is rewarded financially and in mobility for its special (technological, scientific) knowledge of the means of production.<sup>37</sup> Specialty labor can also shop around the globe for employment or be recruited by employers who can afford them. Informal and forced labor enjoy far less, if any, choice of geographic location, and low-grade service labor mostly follows the mobile classes it is intended to serve.<sup>38</sup>

### 3. *The New International Division of Labor (NIDL) and Informal Labor*

Contracting networks and global commodity chains in the NIDL extend into the informal economy, in which low-paid women, and sometimes children, are key elements.<sup>39</sup> Ever since multilateral institutions "rediscovered" women of the third world and governments officially stereotyped and advertised them as a cheap, docile and nimble labor force best suited for manufacturing work, corporations have specifically targeted "third world women" for labor.<sup>40</sup> This has occurred alongside a process of "housewifization," one which misrepresents and generalizes third world women as housewives rather than wage laborers. This misrepresentation occurs despite the fact that most women in the third world work and are often de facto heads of households.<sup>41</sup>

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<sup>37</sup> Manuel Castells, *Global Informational Capitalism*, in THE GLOBAL TRANSFORMATIONS READER: INTRODUCTION TO THE GLOBALIZATION DEBATE 322-23 (David Held & Anthony McGrew eds., 2d ed. 2003).

<sup>38</sup> See Fran Tonkiss, *Global Political Economy: Power, Labour, Politics*, 2 SOC. COMPASS 577 (2008) [hereinafter Tonkiss, *Global Political Economy*]. See also E. BENJAMIN SKINNER, A CRIME SO MONSTROUS: A SHOCKING EXPOSÉ OF MODERN DAY SEX SLAVERY, HUMAN TRAFFICKING AND URBAN CHILD MARKETS 174, 207, 333-34 (2008) for how this pattern also applies to child prostitution and military forces. Also, note the distinction between freedom of movement or mobility as associated with transnationality versus forced or coerced migration often associated with human trafficking.

<sup>39</sup> See generally MIES, *supra* note 24; Tonkiss, *Global Political Economy*, *supra* note 38.

<sup>40</sup> MIES, *supra* note 24, at 114.

<sup>41</sup> *Id.* at 166. For an explanation of Mies' concept of "housewifization," see Elisabeth Prügl, *Home-Based Workers: A Comparative*



These processes generate cheap, “informal” labor by devaluing women’s work and maintaining horizontal segregation to prevent collective bargaining power.<sup>42</sup>

Examining the NIDL illuminates hierarchies of gender and race that facilitate economic and class exploitation on a global scale. It helps make sense of human trafficking as well, by examining not only terrestrial manufacturing work, but also how service work disperses and provokes labor to move across the globe. Labor exploitation of females and children in the NIDL “tends to blur the distinction between [labor] commodification and slavery.”<sup>43</sup>

#### 4. *Forced Labor*

Forced labor becomes the natural conclusion of the NIDL’s unremitting hunt for the cheapest labor. The majority of forced labor occurs in developing nations, with “[a] significant proportion . . . [channeled] through an international slave trade” or human trafficking,<sup>44</sup> also referred to as modern day slavery.<sup>45</sup>

Corporations delve into new markets where governments routinely control, abuse and enslave their own citizens for profits.<sup>46</sup> Under the imperative of “growth” and with greater concentration of wealth among elites in the developing world (especially of agricultural land), slavery becomes the obvious choice for those who become slaveholders and often the only choice for those whom they

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*Exploration of Mies’s Theory of Housewifization*, 17 J. WOMEN’S STUD. 114, 115-16 (1996).

<sup>42</sup> Fragmentation of the labor force in such ways is often a general effect of commodity chains, which create modules of labor as interchangeable links, resulting in a disposable and insecure labor force with little or no bargaining power. See TONKISS, *supra* note 2, at 20, 73, 102, 103-104. Fragmentation of the collective action of labor is a testament to the TCC’s power (to be coordinated and organized) in contrast to labor being fractured, interchangeable and disposable as commodity and contracting chains require. Thus, labor is a class in itself—albeit multi-tiered based on degrees of exploitation—but not yet “for” itself.

<sup>43</sup> Marx saw labor commodification and slavery “as elements of primitive accumulation,” and these also “fit with [Marxist geographer David] Harvey’s contemporary account of capital accumulation by dispossession.” TONKISS, *supra* note 2, at 24.

<sup>44</sup> *Id.*

<sup>45</sup> See, e.g., KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY (2004) (describing the “new slavery” that currently occurs throughout the world).

<sup>46</sup> *Id.* at 13-14.

enslave.<sup>47</sup> Expressing the NIDL logic, “new slavery” is cheap and brutal compared to what slavery scholar Kevin Bales calls “old slavery.”<sup>48</sup> In new slavery, the purchase price is low and the labor is short-term, disposable and drawn from an abundant pool of slaves, yielding high profits.<sup>49</sup> Moreover, modern slavery is mutating “from culturally specific forms to an emerging standardized or globalized form.”<sup>50</sup> The sexual dimensions of slavery based on gender, race and age hierarchies are very telling. Despite the current decline of slavery based on racial or ethnic difference between slaveholders and slaves, sexual slavery highlights that race, ethnicity, gender and childhood are still salient because these aspects of identity are commodified in commercial sexual exploitation.<sup>51</sup>

While common threads between human trafficking for labor or commercial sexual exploitation are economic exploitation and duress,<sup>52</sup> their contributing factors, specifically globalized agriculture and the chaos of economic changes, are connected by law and policy.<sup>53</sup> The global economy’s haphazard development and its “structurally-induced instabilit[ies]” throughout the world make people vulnerable to slavery, especially debt bondage, by precipitating class polarization, debt, and destitution.<sup>54</sup> Sub-contracting chains insert tiers of managers and contractors between transnational corporations, slaveholders, and forced labor, distancing them legally and morally from the miasma of slavery.<sup>55</sup> Slave labor in a commodity chain lowers production costs and passes savings up the stream of commerce, resulting in lower prices and higher profits.<sup>56</sup> As one follows parallel commodity and contracting chains from corporate ganglia to their invisible bases, exploitation increases. With each mutually reinforced tier, from wage labor to informal and forced sectors, these chains create stratified class structures.<sup>57</sup> The lower the tier, the less skill, valuation, pay, and bargaining power, until people disappear into the

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<sup>47</sup> *Id.* at 13.

<sup>48</sup> *Id.* at 5, 14-19.

<sup>49</sup> *Id.* at 15.

<sup>50</sup> *Id.* at 25, 26.

<sup>51</sup> *See generally* SKINNER, *supra* note 38.

<sup>52</sup> *Id.* at 233-34.

<sup>53</sup> *Id.* at 232, 234; TONKISS, *supra* note 2, at 173.

<sup>54</sup> *See* BALES, *supra* note 45, at 234-35; Castells, *supra* note 37, 134.

<sup>55</sup> BALES, *supra* note 45, at 235-36.

<sup>56</sup> *Id.* at 23.

<sup>57</sup> *See, e.g.*, TONKISS, *supra* note 2, at 23-24.

realm of forced labor and/or commercial sexual exploitation maintained by duress and socio-legal invisibility.

## **B. Race and Class are Relevant: Toward a Class Crit Understanding of Child Prostitution**

### *1. A Global Perspective*

Although the commercial sexual exploitation of children is often discussed under the rubric of forced labor, it is problematic to characterize child prostitution as “labor,” even if it is categorized as “one of the worst forms of child labor,” as per the Industrial Labor Organization (ILO).<sup>58</sup> However, locating child prostitution on the tier of forced labor or human trafficking allows making important connections between it and global economic processes. Child prostitution is not simply an extreme aberration of an otherwise just and equal world economy, nor simply a problem of forced labor relegated to poor and developing nations. The prevalence of child prostitution is, however, strongly tied to conditions such as child poverty and child labor, which most heavily impact particular regions.<sup>59</sup> Child poverty is not an exclusive cause of child prostitution, but it is widely recognized as its most significant contributing factor.<sup>60</sup> The Asian-Pacific region, especially South Asia, contains the highest number of children in poverty,<sup>61</sup> labor,<sup>62</sup>

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<sup>58</sup> Press Release, International Labor Organization, ILO Worst Forms of Child Labour Convention Comes into Force (Nov. 17, 2000), [http://www.ilo.org/global/about-the-ilo/press-and-media-centre/press-releases/lang-en/WCMS\\_007917](http://www.ilo.org/global/about-the-ilo/press-and-media-centre/press-releases/lang-en/WCMS_007917).

<sup>59</sup> See Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000) [hereinafter G.A. Res. 54/263]; see also CAROL BELLAMY, UNICEF, CHILDHOOD UNDER THREAT: THE STATE OF THE WORLD’S CHILDREN 17, 26 (2005), <http://www.unicef.org/sowc05/english/sowc05.pdf>. For an explanation of the measurement of child poverty and standard of living in comparative international perspective as well as regional assessments of absolute poverty and severe deprivation among children in the developing world, see DAVID GORDON ET AL., CHILD POVERTY IN THE DEVELOPING WORLD: STUDIES IN POVERTY, INEQUALITY AND SOCIAL EXCLUSION 3 (2003).

<sup>60</sup> G.A. Res. 54/263.

<sup>61</sup> South Asia contains the highest number of children in absolute poverty and the highest number of children in severe deprivation. GORDON ET AL., *supra* note 59, at 22, 23. Sub-Saharan Africa has the highest number of persons in absolute poverty and South Asia has the highest number of children in severe deprivation in both urban and rural areas. *Id.* at xvii, 20.

and prostitution.<sup>63</sup> Africa, particularly Sub-Saharan Africa, has the highest proportion of children in child poverty,<sup>64</sup> labor,<sup>65</sup> and prostitution.<sup>66</sup> According to UNICEF, “[two] million children, the majority of them girls, are sexually exploited in the multibillion-dollar commercial sex industry.”<sup>67</sup> Current reports cite human trafficking as “the world’s fastest growing criminal industry,”<sup>68</sup> with sex trafficking having achieved the steady growth and cash flows of a stable “industry” in the global capitalist economy.<sup>69</sup> Therefore, child prostitution on a global level is racialized, classed and gendered.

Forced labor also occurs significantly in industrialized countries with advanced economies, “where human trafficking—particularly of women and girls—into forced domestic [labor] and sex work—is a profitable but largely hidden part of cross-border economic flows.”<sup>70</sup>

## 2. *The United States*

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<sup>62</sup> INTERNATIONAL LABOUR ORGANIZATION AND INTER-PARLIAMENTARY UNION, ELIMINATING THE WORST FORMS OF CHILD LABOUR: A PRACTICAL GUIDE TO ILO CONVENTION NO. 182: HANDBOOK FOR PARLIAMENTARIANS 24 (2002); JEANINE REDLINGER, CHILD TRAFFICKING AND SEXUAL EXPLOITATION, U. IOWA CTR. FOR HUMAN RIGHTS CHILD LABOR RESEARCH INITIATIVE 5 (2004), [http://www.continue.tolearn.uiowa.edu/laborctr/child\\_labor/materials/pdf/modules/child\\_trafficking.pdf](http://www.continue.tolearn.uiowa.edu/laborctr/child_labor/materials/pdf/modules/child_trafficking.pdf).

<sup>63</sup> Karen D. Breckenridge, *Justice Beyond Borders: A Comparison of Australian and U.S. Child-Sex Tourism Laws*, 13 PAC. RIM L. & POL’Y J. 405, 408 (2004).

<sup>64</sup> See GORDON ET AL., *supra* note 59, at 22-23.

<sup>65</sup> Sub-Saharan Africa “has the highest incidence of children working, with one in four children engaged in some form of hazardous work.” INTERNATIONAL LABOUR ORGANIZATION, ACCELERATING ACTION AGAINST CHILD LABOUR: GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK, at xiii (2010), [http://www.ilocarib.org.tt/portal/images/stories/contenido/pdf/childLabour/accelerating\\_action\\_plan\\_CL.pdf](http://www.ilocarib.org.tt/portal/images/stories/contenido/pdf/childLabour/accelerating_action_plan_CL.pdf). Child prostitution is considered hazardous, or one of the “worst forms of child labor.” *Id.*

<sup>66</sup> *Id.* at 10.

<sup>67</sup> BELLAMY, *supra* note 59, at 26.

<sup>68</sup> William Spindler, *Conference Puts Focus on Human Trafficking, Fastest Growing Criminal Industry*, UNHCR (Oct. 11, 2010), <http://www.unhcr.org/4cb315c96.html>.

<sup>69</sup> SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 17 (2009).

<sup>70</sup> TONKISS, *supra* note 2, at 24.

Class polarization in the United States—the widening of the gap between rich and poor—“appears to be as true . . . as it is for poorer countries,” and also follows similar patterns of disparity along the rural-urban divide.<sup>71</sup> Child poverty levels in the United States are on par with Mexico, making their percentages the highest among member nations of the Organisation for Economic Co-operation and Development (OECD).<sup>72</sup> It also appears that a disproportionate number of poor children are involved in prostitution in the United States.<sup>73</sup> The picture of poverty in the United States is one of a wealthy nation with an advanced economy whose social conditions in many ways mirror those of developing nations.

Current data on the United States estimates that 100,000 children are forced into prostitution each year, and that as many as 300,000 children are subject to some form of commercial sexual exploitation.<sup>74</sup> The average age for entering prostitution is reportedly thirteen years old,<sup>75</sup> well below the age of majority established in the United Nations Convention on the Rights of the

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<sup>71</sup> SKLAIR, GLOBALIZATION, *supra* note 25, at 53.

<sup>72</sup> UNICEF, INNOCENTI REPORT CARD: A LEAGUE TABLE OF CHILD POVERTY IN RICH NATIONS 2 (2000), <http://www.unicef-irc.org/publications/pdf/repcard1e.pdf>.

<sup>73</sup> Stephanie Halter, Law Enforcement's Reconceptualization of Juvenile Prostitutes From Delinquency Offenders to Child Sexual Abuse Victims in Six U.S. Cities 14 (May 2008) (unpublished Ph.D. dissertation, University of New Hampshire) (on file with author) (citing RICHARD J. ESTES & NEIL A. WEINER, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE US, CANADA AND MEXICO (2001), [http://www.sp2.upenn.edu/~restes/CSEC\\_Files/Complete\\_CSEC\\_020220.pdf](http://www.sp2.upenn.edu/~restes/CSEC_Files/Complete_CSEC_020220.pdf)).

<sup>74</sup> Although quantitative data and statistical information regarding human trafficking is deemed problematic because it is difficult to collect and assess, this 1996 estimate from End Child Prostitution Child Pornography and the Trafficking of Children for Sexual Exploitation (ECPAT) is the most cited for child sex trafficking for the United States. ESTES & WEINER, *supra* note 73, at 4; *see also* Halter, *supra* note 73, at 9 (citing the ECPAT 1996 report and discussing the limitations of the data).

<sup>75</sup> ESTES & WEINER, *supra* note 73, at 92.

Child—eighteen years of age.<sup>76</sup> These estimates and figures have held steady over the last decade.<sup>77</sup>

Although the Trafficking Victims Protection Act (TVPA)<sup>78</sup> and its reauthorizations are meant to be comprehensive federal laws to protect victims of trafficking and/or prosecute traffickers, a unified framework for children is still lacking.<sup>79</sup> How the state handles children involved in prostitution depends upon laws that allow children in the United States to be treated both as victims of sex abuse by adults and as perpetrators of sex crimes against adults,<sup>80</sup> and depends significantly on law enforcement discretion.<sup>81</sup> Also, relevant laws of the United States appear to be moving toward more punitive measures underpinned by retributive philosophies.<sup>82</sup> This context produces disparate outcomes along lines of race, class, gender, and childhood.

As discussed earlier, a disproportionate number of children who are commercially sexually exploited through prostitution in the United States and globally are female and come from conditions of poverty. Child prostitution and child labor follow patterns of child poverty, disproportionately affecting children of Sub-Saharan Africa and Asia, which demonstrates that race, class, and gender are highly relevant to the global problem of child prostitution. In the United

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<sup>76</sup> United Nations Convention on the Rights of the Child art. 1, Sept. 2, 2009, 1577 U.N.T.S. 3. The United States and Somalia—both U.N. members—have not ratified the UNCRC. However, the United States is a signatory to the Optional Protocol, which prohibits the commercial sexual exploitation of children.

<sup>77</sup> Halter, *supra* note 73, cites these estimates from 2001, when her findings were published in 2008, indicating that over most of the first decade of the 2000's, these numbers were stable.

<sup>78</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

<sup>79</sup> See, e.g., Christianna M. Lamb, *The Child Witness and the Law: The United States' Judicial Response to the Commercial Sexual Exploitation of Children in Light of the UN Convention on the Rights of the Child*, 3 OR. REV. INT'L L. 63 (2001).

<sup>80</sup> *Id.*; Pantea Javidan, *Invisible Targets: Juvenile Prostitution, Crackdown Legislation and the Example of California*, 9 CARDOZO WOMEN'S L.J. 237 (2003); Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?* 6 U. ST. THOMAS L.J. 96 (2009); Moira C. Heiges, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428 (2009).

<sup>81</sup> Lamb, *supra* note 79, at 86.

<sup>82</sup> Shelby Schwartz, *Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York*, 18 COLUM. J. GENDER & L. 235 (2008).

States, a 2008 study on law enforcement contact with children involved in prostitution in six major U.S. cities found that African-American children are most heavily burdened with child poverty and African-American girls represent a highly disproportionate majority of arrests for the crime of prostitution.<sup>83</sup>

The study also found that arrests of African-American children were disproportionately higher and also increasing at substantially higher rates.<sup>84</sup> Forty-one percent of the sample of arrested children was African-American when African-Americans comprised only twelve percent of the population in the cities sampled.<sup>85</sup> A 2009 study found that in New York City, one of the cities investigated in the 2008 study, arrestees from 1997 to 2006 were overwhelmingly African-American females.<sup>86</sup> Seventy-seven percent were female and seventy percent were African-American, although only twenty-seven percent of all New York City residents were African-American according to the 2000 census.<sup>87</sup> It remains unclear whether recent increases in arrests of African-American youth for prostitution reflect an actual increase in the incidence of prostitution among this population.<sup>88</sup> Whether they do or not, it is clear that African-American females in the United States are disparately impacted by child prostitution, its attendant socio-economic conditions, and the legal responses it elicits. Legal responses are also the cause of significant concern over differential treatment of foreign-born international trafficking victims, versus U.S.-born domestic trafficking victims.<sup>89</sup> When TVPA protections do extend to victims—whether international or domestic—the way children are treated—whether they are punished for committing sex crimes or are diverted from criminal punishment—depends ultimately upon the level of resources that specific jurisdictions dedicate to the child.<sup>90</sup>

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<sup>83</sup> Halter, *supra* note 73, at 129.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> AMY MUSLIM ET AL., THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEW YORK CITY 16, 18 (2009), [www.ncjrs.gov/pdffiles1/nij/grants/225084.pdf](http://www.ncjrs.gov/pdffiles1/nij/grants/225084.pdf).

<sup>87</sup> *Id.* at 16, 18.

<sup>88</sup> Halter, *supra* note 73, at 137, 202.

<sup>89</sup> MUSLIM ET AL., *supra* note 87, at 16.

<sup>90</sup> Halter, *supra* note 73, at 15, 148.

#### IV. CONCLUSION

Law can play a key role in both reproducing inequalities and in accomplishing social justice. Examining the role of law during the era of modern-day slavery and since the Civil Rights Movement indicates that a most profound shift has been the universal illegality of slavery and the illegality of certain types of discrimination. However, as this Essay argues, this modern day period is one of persisting inequalities. Researcher Benjamin Skinner reports, “there are more slaves today than at any other point in human history.”<sup>91</sup> This fact alone is sufficient for challenging the arguments advanced by “the posts” that this Essay addresses; slavery or exploitation through human trafficking thrives on inequalities of race, class, gender and childhood. These persisting inequalities require examining the role of law in reproducing the social and legal conditions that maintain such an institution despite its universal illegality.

Human trafficking today occurs in a context of globalization and economic crisis, with abundant reportage regarding growing socio-economic inequalities, including in the United States.<sup>92</sup> The existence of human trafficking in global and national context, particularly while focusing upon the case of children who are trafficked for purposes of commercial-sexual exploitation, demonstrates the continuing relevance of race, class and gender analysis. It also demonstrates the criticality of seeing childhood and age as key dimensions of identity in the context of intensified disparities that mutually construct one another. Human trafficking, particularly when viewed in its larger context, challenges post-racialist, post-class, and post-feminist arguments that respectively claim the diminishing relevance of analyzing the world in terms of race, class and gender.

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<sup>91</sup> SKINNER, *supra* note 38, at 17. Skinner cites the International Labour Organisation’s estimate that at least 12.3 million people are in slavery. *Id.* at 7. See also BALES, *supra* note 45, at 240. Bales estimates that there are approximately 27 million people in slavery today. This would be the greatest number of slaves recorded, although in the past a greater proportion of the world’s population was in slavery. SKINNER, *supra* note 38, at 13.

<sup>92</sup> See, e.g., Erik Eckholm, *Recession Raises Poverty Rate to a 15-Year High*, N.Y. TIMES, Sept. 17, 2010, <http://www.nytimes.com/2010/09/17/us/17poverty.html>; Karin Zeitvogel, *African Americans Worse off in 2011: Study*, YAHOO NEWS (Mar. 31, 2011), [http://news.yahoo.com/s/afp/20110331/ts\\_alt\\_afp/usminorityeconomy\\_20110331231509](http://news.yahoo.com/s/afp/20110331/ts_alt_afp/usminorityeconomy_20110331231509).



This Essay has moved toward developing a concept of class to enhance Critical Class Theory, or Class Crits, as a component of Critical Race Theory. It has discussed a broad, global view of class as well as poverty in the United States, which is also a key feature of class in any nation. It intends to inspire and facilitate further examinations of class, particularly those more specific to the United States, and to better understand the ways in which race, class, gender, and childhood are constructed in a global context and how national economic processes of the United States transcend the boundaries of the nation as they shape and are shaped by global economic processes.

This approach encourages examinations of law and society that engage directly with persisting patterns of socio-economic inequalities. In the alleged era of the posts, law and society continue to reproduce multidimensional inequalities based on material dispossessions along lines of race, class, gender, age, and childhood. The “post” arguments challenged here are ones that attempt to foreclose discussion along these lines. In the age of a globalizing capitalist economy, material dispossessions co-occur with ideological and intellectual attempts to discursively dispossess researchers, theorists, and practitioners of important tools with which to recognize, analyze, and articulate the full weight of problems such as human trafficking that are embedded in wider systems of subordination. In this sense, Multidimensionality is antisubordination praxis. A Multidimensional method of Critical Class analysis that maintains perspective on hegemonic power relations, which increasingly concentrate wealth and resources at the top, provides a grounded, useful and availing approach to grasping the profound inequalities within and among nations from which to build antisubordination praxis.